

In the Matter of RYAN AERONAUTICAL CO. and UNITED AIRCRAFT
WELDERS OF AMERICA, IND.

Case No. R-1421.—Decided October 2, 1939

Aircraft Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees; refusal of employer to recognize petitioning union—*Unit Appropriate for Collective Bargaining:* employees of company more than 50 per cent of whose working time is spent in oxy-acetylene, oxy-hydrogen and electric arc welding, in gas torch cutting and in the work of welders' helpers; segregation into one department; no history of collective bargaining; no other unions in plant; determination not a bar to later determination under changed status of organization—*Election Ordered*

Mr. William R. Walsh, for the Board.

Sloane & Steiner, by *Mr. Fred A. Steiner*, of San Diego, Calif., for the Company.

Mr. James M. Carter, of Los Angeles, Calif., for the United.

Mr. C. L. Bentley and *Mr. Thomas McNett*, of San Diego, Calif., and *Mr. John P. Frey* and *Mr. Paul R. Hutchings*, of Washington, D. C., for the I. A. M.

Mr. Robert D. Allen, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On June 5, 1939, United Aircraft Welders of America, Ind., herein called the United, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition, and on June 13, 1939, an amended petition, alleging that a question affecting commerce had arisen concerning the representation of employees of Ryan Aeronautical Co., San Diego, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 21, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, 15 N. L. R. B., No. 90.

ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On June 23, 1939, the Regional Director issued a notice of hearing, copies of which were served¹ upon the Company, the United, and the International Association of Machinists, herein called the I. A. M., a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice a hearing was held on June 29, 1939, at San Diego, California, before Henry W. Schmidt, the Trial Examiner duly designated by the Board. At the hearing the I. A. M. petitioned for leave to intervene. Its petition was granted by the Trial Examiner. The Board, the Company, and the United were represented by counsel, the I. A. M. by representatives, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. Pursuant to notice duly served on all parties, oral argument was held before the Board on August 22, 1939. The I. A. M. was represented by counsel and participated in the argument.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, a California corporation with its principal place of business at San Diego, California, is engaged in the manufacture and sale of airplanes and airplane parts for both commercial and military use. The principal raw materials used are aluminum alloy, chrome molybdenum, stainless steel, fabric, instruments, and accessories, all coming from points outside California, and paints, varnishes, standard parts, engines, and rubber, some of which come from points outside California. The Company annually spends approximately \$120,000 for raw materials, the greater part of which are brought to its plant from outside California. During its last fiscal year the Company's sales of airplanes aggregated \$211,000, and its sales of parts, \$233,000. Eighty per cent of the planes and five per cent of the parts were sold to customers outside California.

¹ At the hearing, a question arose as to whether the notice was served within the time required. However, all parties waived their right to object to this irregularity.

II. THE ORGANIZATIONS INVOLVED

United Aircraft Welders of America, Ind., is an unaffiliated labor organization, admitting to membership all welders, apprentice welders, and helpers employed by the Company.

International Association of Machinists is a labor organization affiliated with the American Federation of Labor. It admits to membership all production employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On May 15, 1939, the United sent a telegram to the Company stating that it had been designated as bargaining agent of the welders in the Company's employ and requesting a meeting to discuss a proposed agreement with the Company. To this the Company replied that it could not meet with the United, giving as its reason the fact that the Company had had no notice from the Board that the United represented a majority of the Company's employees. Although meetings between the United and the Company were held thereafter, the Company persisted in its refusal to bargain with or grant any recognition to the United. It contends that a unit consisting of welders alone is not appropriate. The impasse thus reached culminated on June 15, 1939, in a strike by the United which was still in progress at the time of the hearing. Twenty-six employees participated in the strike.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The United contends that all oxy-acetylene, oxy-hydrogen and electric arc welders employed to do fusion welding and all gas torch cutters and all welders' helpers employed by the Company, excluding those with authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining. The Company employs some 308 hourly paid production and maintenance workers,

of which 33 are claimed by the United to be welders and welders' helpers. The Company maintains a distinct welding department where most of the work of this type is performed. That department employs 31 persons, excluding the foreman.

The I. A. M. contends that welders do not constitute a distinct craft but are members of traditional crafts performing work of which welding is a necessary part, and that a unit consisting of welders alone is therefore not appropriate.

The I. A. M. made no showing of membership among the Company's employees. Aside from the United, there has been no labor organization in the plant. A determination in this case that the welders employed by the Company constitute an appropriate unit is no bar to a later determination at another stage of self-organization among the Company's employees, consistent with a change in the status of such self-organization. Under the circumstances of this case, we are of the opinion that the welders and welders' helpers employed by the Company constitute an appropriate unit. The record, however, insufficiently defines the functions of the individuals claimed by the United. We believe that the welding unit should be restricted to employees who devote the major portion of their working time to welding.

We accordingly find that all employees of the Company, more than 50 per cent of whose working time is spent in oxy-acetylene, oxy-hydrogen and electric arc welding, in gas torch cutting and in the work of welders' helpers, excluding those with authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to such employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The United claimed as members almost all of those in the proposed unit, but offered no satisfactory proof of such membership. Under the circumstances, the question concerning representation which has arisen must be resolved in an election by secret ballot.

At the hearing all parties stipulated that the pay roll of June 9, 1939, might be used as a basis for determining eligibility of those employees entitled to vote in the event of an election. This was the last pay roll previous to the strike. We shall accordingly direct that employees within the appropriate unit during the pay-roll period ending June 9, 1939, including such employees who did not work during such pay-roll period because they were ill or on vacation or were then or have since been temporarily laid off, but excluding

any who have since quit or have been discharged for cause, shall be eligible to vote.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Ryan Aeronautical Co., San Diego, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company, more than 50 per cent of whose working time is spent in oxy-acetylene, oxy-hydrogen and electric arc welding, in gas torch cutting and in the work of welders' helpers, excluding those with authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board, by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Ryan Aeronautical Co., an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Company, more than 50 per cent of whose working time is spent in oxy-acetylene, oxy-hydrogen and electric arc welding, in gas torch cutting and in the work of welders' helpers, who were employed by the Company during the pay-roll period ending June 9, 1939, including such of those employees who did not work during such pay-roll period because they were ill or on vacation or who were then or have since been temporarily laid off, but excluding such of those employees having the right to hire and discharge or who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Aircraft Welders of America, Ind., for the purposes of collective bargaining.